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July 12, 2004

BY ELECTRONIC FILING

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: Notification of *Ex Parte* Communication
MB Docket No. 04-63

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on July 9, 2004, Matthew Zinn of TiVo Inc. ("TiVo") transmitted the attached position paper to Mr. Robert Pepper of the Office of Strategic Plans and Policy.

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for the above-referenced docket.

Very truly yours,

A handwritten signature in black ink, appearing to read "James M. Burger". The signature is fluid and cursive, with the first name "James" and last name "Burger" clearly legible.

James M. Burger

cc Robert Pepper (by email)



BROADCAST PROTECTION POSITION PAPER

1. TiVo needs FCC approval to allow TiVo DVRs to share DTV broadcast content only when they belong to the same owner and are registered to the same account under the same credit card.
2. The goal of the Broadcast Protection proceeding is to inhibit “indiscriminate redistribution of DTV broadcast content over the Internet.”
3. TiVo’s security system meets this goal. No party including the MPAA disputes that fact. Rather, the MPAA raises unrelated business concerns regarding: (1) their demand for a direct role in TiVo specification changes; and (2) the ability of a TiVo user to access their saved content outside of the home.
4. Specification Changes. Unlike any other applicant, only TiVo uses its security system to protect its own assets, such as its customers’ viewing information and the TiVo service itself, in addition to DTV programming. TiVo’s security system is extremely robust because TiVo’s revenue stream and business depend on it. Unlike any other applicant, TiVo is not just seeking to sell its security system to third parties for licensing fees – TiVo’s business depends on the strength of its TiVoGuard security system.
 - a. Accordingly, direct MPAA member involvement in TiVo’s security system is impractical. If TiVo discovers a security weakness, it must fix it immediately to protect its own revenues as well as to protect customers; *e.g.*, California Civil Code §1798.82 (requires companies doing business in California to notify affected residents of data security breaches involving personal information). TiVo simply cannot wait to debate security fixes or arbitrate security while its business is compromised.
 - b. The FCC expressed concern about one industry segment exercising control over another. MPAA members can’t be placed in a position to “leverage” TiVo and control its business.
 - c. MPAA members have several remedies to address legitimate concerns, including petitioning the FCC to revoke TiVo’s certification; filing a copyright complaint against TiVo; or suing a TiVo subscriber.
5. Remote Access. The “TiVo-To-Go” portion of TiVo’s certification application would allow a TiVo subscriber to share DTV broadcast content among a maximum of 10 devices that (i) belong to the same owner; (ii) are registered to the same account; and (iii) the TiVo service is paid for with the same credit card.
 - a. The remote access feature is designed to allow subscribers to transfer television programs from their primary residence to their vacation home.
 - b. Because a device can only be registered to one account, the secure viewing group can not be expanded or “daisy-chained” beyond 10.

6. MPAA does not contend that this “secure viewing group” constitutes “indiscriminate redistribution” of content.
 - a. MPAA’s expressed concerns that a Los Angeles TiVo subscriber will use this feature to record television programming in New York and use the Internet to watch a show earlier than broadcast on the West Coast. This concern is misplaced.
 - i. The Internet will not be anywhere near robust enough to enable a transfer of video that fast for many years;
 - ii. DVR users don’t watch television programming this way. They watch time-delayed programming;
 - iii. In any event, this corner case scenario is not “indiscriminate” redistribution.
 - iv. Finally, in the unlikely event that such activity becomes a problem worthy of FCC intervention, and if the studios are willing to invest in a solution, technology could be readily developed to ameliorate time-delay.